

The Commission should establish financial certification policies which recognize that the Commission is asking bidders to certify that they have funds to initiate service in a business for which they can show the financing source no license, no firm assurance of obtaining a license, and, in the case of PCS, a business in which there is no industry history. The typical minority owned business is not likely to be able to obtain a firm financing commitment to initiate service for such a bid.

The Commission should adopt the recommendation of its Small Business Advisory Committee and allow minority bidders to use what the Commission has previously characterized as "letters of interest," rather than commitment letters, to demonstrate their financial qualifications. In addition, minority entities should be allowed to utilize such letters from Small Business Investment Companies ("SBICs") and Specialized Small Business Investment Companies ("SSBICs") to demonstrate their financial qualifications. The House Banking Committee has recently publicized reports detailing the banking industry's admitted practice of redlining in its mortgage lending practices. The banking industry admitted that it rejected minority (black) applicants at a rate far higher than any other applicant group in instances where the applicants 'credentials', other than race were equal. It would be foolishly naive for the Commission or NABOB to assume that the banking industry's discriminatory practices extend only to mortgage lending and that in every other circumstance blacks are treated "just like everyone else." It is for that reason that NABOB urges the

Commission to allow financial flexibility so that the "old-boy" banking network cannot be used to unfairly influence the development of the information superhighway.

VI. THE COMMISSION'S POLICIES TO PREVENT UNJUST ENRICHMENT SHOULD BE CAREFULLY TAILORED

The Budget Act seeks to prevent unjust enrichment. This provision was apparently added to the Budget Act because of a great deal of publicity given to a handful of transactions in which minorities appeared to be "fronts" for nonminority owned companies. NABOB does not support front companies. Indeed, such companies do harm to the positive objectives the Commission's policies are designed to achieve.

Nevertheless, the Commission must be careful in promoting policies designed to prevent the use of front companies. As the Commission is well aware, many bidders, particularly those pursuing PCS licenses, will need to join forces with major corporations in order to obtain the financial resources needed to bid for and construct PCS systems. In such instances, the joint undertakings may be somewhat financially lopsided. However, the mere coming together of two entities of disproportionate size does not mean that the smaller entity is a "front" for the larger.

The potential for one company to be a front exists only where the larger entity enters into the venture with a predetermined ability to: (1) buy-out the smaller entity's interest, (2) within a short period of time (less than three years), (3) at a price

substantially lower than the value which should be attributed to the equity interest ostensibly held by the minority owner. Absent all three of these elements, NABOB submits that the Commission should not assume that such a joint undertaking is a "front" arrangement.

VII. THE COMMISSION MUST ACCORD PREFERENCES AMONG THE DESIGNATED GROUPS WHICH TAKE ACCOUNT OF THE UNIQUE HISTORY OF DISCRIMINATION AGAINST MINORITIES

The Budget Act listed a group of designated entities for whom the Commission is to adopt special procedures in the competitive bidding process. Congress did not require that the Commission provide similar benefits to each of these entities. The long history of Congressional, court and Commission actions documenting the need for and justification for special programs to encourage minority ownership of communications facilities, requires that the principal policies proposed in these Comments should be accorded only to minority owned entities.

It is not NABOB's desire to be placed in a position where it must fight with other designated entities for what may prove to be the crumbs of the auction process. However, NABOB submits that the case for special consideration for minority owned entities, particularly African Americans, is much more fully documented than for the other designated entities. The need for such special consideration traces its roots back to a history of slavery, which none of the other designated entities can claim.

Therefore, NABOB submits that the tax certificate policy which is the linch-pin of the current Minority Ownership Policy must be retained as such, and should not be extended to any other "designated entity." To do otherwise would lead, inevitably, to the erosion of the Policy as a whole. NABOB would similarly restrict to the province of minority bidders, the application of the 25% bonus proposal. In addition, NABOB sees no basis for according rural telephone companies any preferences outside of rural areas. Further should the Commission adopt preferences or enhancement credits other than those proposed herein by NABOB, the Commission should apportion those preferences or enhancements to accord minorities a greater preference or enhancement than the other designated entities.

VIII. CONCLUSION

The Commission has before it a very difficult task in implementing the competitive bidding legislation at issue in this proceeding. The obligation imposed by Congress to assure that minorities are included in this process comes with a long history of efforts to bring minorities into meaningful ownership in the telecommunications industry. The proposals submitted by NABOB in these Comments are intended to assure that the Commission's efforts are consistent with the statutory mandate. The objective is to produce meaningful results. There are virtually no minorities in the radio services to which the competitive bidding procedures will apply. Without the broad policies proposed here, the Commission is

not likely to even marginally change the abysmal underrepresentation of minorities in these services. NABOB therefore, urges the Commission to adopt the procedures and policies proposed here.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF BLACK
OWNED BROADCASTERS, INC.**

By: 

James L. Winston
Rubin, Winston, Diercks,
Harris & Cooke
1730 M Street, N.W.
Suite 412
Washington, D.C. 20036
(202) 861-0870

By: 

Lois E. Wright, Esq.
Counsel to the NABOB Board
of Directors
Inner City Broadcasting
Corporation
801 Second Avenue
New York, New York 10017

Its Attorneys

November 10, 1993